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m>

03/16/2007 12:09 PM

To "Elmer, Mark (ENRD)" <Mark.Elmer@usdoj.gov>

cc Peggy Livingston/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA

bcc

Subject Re: Richardson - proposed FA language

Can you clarify what you intend by the phrase:

- > In seeking approval for a revised or
- > alternative form of Performance Guarantee, Settling Defendant shall
- > follow the procedures set forth in Paragraph 47(b) of this Consent
- > Decree.

You are not suggesting by this that every-time we request a reduction for a milestone that we will need to re-qualify the form of FA are you? Should we specifically say that a request for a reduction is not considered a revised or alternative form of FA?

Also. I need a complete document to take to UPK management. They have not agreed to the CD. I will need to try and explain why you have not made many of the changes that were requested and see how they react.

On Mar 16, 2007, at 11:42 AM, Elmer, Mark (ENRD) wrote:

- > Kevin,
- >
- > Here's our proposed language concerning modification of amount of
- > financial assurance, which would replace paragraph 47(a) in the last
- > version:
- >
- > 1. Modification of Amount and/or Form of Performance Guarantee
- > a) Reduction of Amount of Performance Guarantee. On November 1,
- > 2007, and on November 1 of each year thereafter, Settling Defendant
- > may
- > petition EPA in writing to request a reduction in the amount of the
- > Performance Guarantee(s) provided pursuant to this Section on the
- > basis
- > that it has completed one or more Work Milestones. This request shall
- > identify the Work Milestones that Settling Defendant believes it has
- > completed and shall contain sufficient information to allow EPA to
- > verify the claim. For each Work Milestone that EPA determines has
- > been
- > completed, EPA shall allow Settling Defendant to reduce the amount of
- > the Performance Guarantee(s) required by this Section by the
- > corresponding budgeted cost set forth in the RD/RA Work Plan for that
- > Work Milestone. EPA's agreement pursuant to this provision that a
- > Work
- > Milestone has been completed shall be for the sole purpose of reducing
- > the amount of the Performance Guarantee(s) that Settling Defendant

- > must
- > maintain under this section. In seeking approval for a revised or
- > alternative form of Performance Guarantee, Settling Defendant shall
- > follow the procedures set forth in Paragraph 47(b) of this Consent
- > Decree. If EPA decides to accept such a proposal, EPA shall notify
- > the
- > Settling Defendant of such decision in writing. After receiving EPA's
- > written acceptance, Settling Defendant may reduce the amount of the
- > Performance Guarantee(s) in accordance with and to the extent
- > permitted
- > by such written acceptance. In the event of a dispute, Settling
- > Defendant may reduce the amount of the Performance Guarantee required
- > hereunder only in accordance with a final administrative or judicial
- > decision resolving such dispute. No change to the form or terms of
- > any
- > Performance Guarantee provided under this Section, other than a
- > reduction in amount, is authorized except as provided in Paragraph
- > 47(b)
- > of this Consent Decree.
- > We've also made a few slight revisions in definition section to
- > reflect
- > that we are taking the SOW route rather than going with a pre-approved
- > RD/RA work plan.
- >
- > If this looks ok to you, we will be routing decree through our
- > respective managements for comment, so that it can go to you for
- > signature.
- >
- > Thanks,
- >
- > Mark
- > <winmail.dat>

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